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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In Re:

Case No. 09-29123-MKN

MELANI SCHULTE and
WILLIAM R. SCHULTE,
5218 MISTY MORNING LLC,
HOT ENDEAVOR LLC, 2704 SATTLEY
LLC, 1341 MINUET LLC, 1708 PLATO
PICO LLC, 2228 WARM WALNUT LLC,
9425 VALLEY HILLS LLC, 9500
ASPEN GLOW LLC, CHERISH LLC,
SABRECO INC., AND KEEP SAFE LLC,

Chapter 11

Debtors.

Date: November 18, 2020
Time: 9:30 a.m.

**REPLY TO RESPONSE TO DEBTOR'S AMENDED MOTION FOR
CONTEMPT FOR VIOLATION OF THE AUTOMATIC STAY AND
DISCHARGE INJUNCTION, FAILING TO COMPLY WITH A COURT
ORDER AND THE CONFIRMED PLAN AND FOR DAMAGES
INCLUDING ATTORNEYS FEES AGAINST CREDITOR, CITI
MORTGAGE INC.**

COMES NOW, Debtor, Melani Schulte ("Mrs. Schulte" or "Debtor"), in Reply
to Rushmore's Response to Debtor's Amended Motion for Contempt for Violation of
the Automatic Stay and Discharge Injunction and Failure to Comply with A Court
Order and the Confirmed Plan and for Damages including Attorneys Fees against

Creditor, Citi Mortgage Inc. (“Citi”) for the property located at 9500 Aspen Glow Drive, Las Vegas Nevada 89134 (“Aspen Glow Dr.”).

I Argument

Citi’s opposition consists of a lot of case law, but no real substance and in the end only makes three points. First, that Schulte has been receiving correct statements the last 12 months. Second, that Schulte has missed payments on the loan during the last decade. And third, Schulte has filed other bankruptcies. As shown below, none of these make a difference.

1. Citi’s statements were incorrect for years

To begin with, Citi confusingly and repeatedly states that Schulte’s *allegedly* received statements.¹ Obviously, if Citi did not send these statements, that happen to contain its logo, address and phone number, it should be stating what actions it is taking to combat this fraud it has experienced. Instead, Citi’s opposition changes gears and spends much of its brief discussing those *alleged* statements. Next, Rushmore proudly states Schulte has received correct statements for the past twelve (12) months (Opp. p.6, ln.24-27; p.9, ln.18-20 and p.10, ln.23-24). However, these statements are from another servicer, Cenlar *not* Citi. So why is Citi touting what another servicer has done? Clearly, to deflect from what it has failed to do, i.e. provide correct statements for years.

1. Opp. p.11, ln.14, p.15, ln.10, 11, 16, 17

1 **2. Whether Schulte missed payments does not obviate Citi's need to send**
2 **correct statements**

3 Also, even if Schulte missed some payments over the last decade on Aspen
4 Glow, that does not negate Citi putting the incorrect monthly payment and interest
5 rate on statements to her for almost a decade .
6

7 **3. Other bankruptcies irrelevant**

8 In addition, Schulte has not filed any other *personal* bankruptcy case since
9 this case. The fact that she has some companies that have filed bankruptcy is not
10 relevant to her personal bankruptcy. Besides, Citi was sending Schulte incorrect
11 statements even during the 2018 Schulte Properties LLC Chapter 11 bankruptcy (Bk
12 No. 18-12734-MKN) until its bankruptcy attorney in that case complained and Cenlar
13 corrected it.
14

15
16 **4. Citi should be held in contempt for its failure to abide by Schulte's**
17 **confirmed plan.**

18 Finally, it is generally accepted that provisions of a confirmed plan may
19 support a finding of contempt. See *In re Deed-Note Traders, L.L.C.*, 2018 WL
20 1354328 at *9 (9th Cir. BAP March 14, 2018) ("The bankruptcy court has the authority
21 to hold a party in contempt for violating a court order such as the Second
22 Confirmation Order, and impose civil contempt sanctions under §105(a)"). In fact,
23 a creditor cannot utilize its accounting procedures to contravene the terms of a
24 confirmed chapter 13 plan and the Bankruptcy Code. *In re Rathe*, 114 BR 253, 257
25 (Bankr. D. Id. 1990). The same should hold true for a chapter 11 confirmed plan.
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27
28

1 Here, Citi should be held in contempt for violating Schulte's confirmed plan.

2 **IV**
3 **Conclusion**

4 Citi's opposition does *nothing* to combat the *fact* that for years it failed to
5 correct its monthly mortgage statements to conform to Schulte's confirmed plan in
6 relation to her monthly mortgage payment and interest rate. That another servicer
7 corrected the statements years later is of no moment. Therefore, Citi violated the
8 stay, discharge injunction and the confirmed plan. A separate hearing for potential
9 damages should be set.
10
11

12
13 DATED this 19th day of October, 2020.

14 RESPECTFULLY SUBMITTED:

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CERTIFICATE OF SERVICE

I hereby certify that the 19th day of October, 2019, I caused the above and foregoing REPLY TO RESPONSE TO DEBTOR'S AMENDED MOTION FOR CONTEMPT FOR VIOLATION OF THE AUTOMATIC STAY AND DISCHARGE INJUNCTION, FAILING TO COMPLY WITH A COURT ORDER AND THE CONFIRMED PLAN AND FOR DAMAGES INCLUDING ATTORNEYS FEES AGAINST CREDITOR, CITI MORTGAGE INC. to be sent by electronic notice through the Court's ECF program and or depositing same in the United States Mail, first class, postage prepaid, in a securely sealed envelope and addressed to the last known address of the following:

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